

AMENDED IN ASSEMBLY AUGUST 22, 2014

AMENDED IN ASSEMBLY AUGUST 18, 2014

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 1300

Introduced by Senator Hancock
(Principal coauthor: Assembly Member Skinner)

February 21, 2014

An act to add Sections 7872 and 7873 to the Labor Code, relating to refineries.

LEGISLATIVE COUNSEL'S DIGEST

SB 1300, as amended, Hancock. Refineries: turnarounds.

Existing law, the California Refinery and Chemical Plant Worker Safety Act of 1990, states that its purpose is to prevent or minimize the consequences of catastrophic releases of toxic, flammable, or explosive chemicals. The act provides for the adoption by the Occupational Safety and Health Standards Board of specified process safety management standards for, among others, refineries that handle acutely hazardous material. The act declares the intent of the Legislature for the standards board and the Division of Occupational Safety and Health to promote worker safety through implementation of training and process safety management, as defined, in refineries and other facilities as deemed appropriate. A violation of the act is a crime.

This bill would require every petroleum refinery employer to, every September 15, submit to the division a full schedule for the following calendar year of planned turnarounds, meaning a planned, periodic shutdown of a refinery process unit or plant to perform maintenance,

overhaul, and repair operations and to inspect, test, and replace process materials and equipment, as specified. The bill would also require a petroleum refinery employer, upon the request of the division, to provide access onsite and provide the division with specified documentation relating to a planned turnaround within a certain period of time, as provided. The bill would, ~~except in the case of a request for public release, require as specified, prohibit the division to protect from public disclosure from releasing to the public~~ any information submitted to the division pursuant to these provisions that is designated as a trade secret, as defined. The bill would require the division to notify a petroleum refinery employer in writing of a request for the release of information to the public that includes information that the petroleum refinery employer has notified the division is a trade secret, as provided. ~~This~~ The bill would authorize an employer to seek a court order prohibiting public disclosure. The bill establishes misdemeanor penalties for knowingly and willfully disclosing trade secrets.

Because a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7872 is added to the Labor Code, to read:
2 7872. (a) As used in this ~~section~~, *section and in Section 7873*,
3 “turnaround” means a planned, periodic shutdown, total or partial,
4 of a refinery process unit or plant to perform maintenance,
5 overhaul, and repair operations and to inspect, test, and replace
6 process materials and equipment. “Turnaround” does not include
7 unplanned shutdowns that occur due to emergencies or other
8 unexpected maintenance matters in a process unit or plant.
9 “Turnaround” also does not include routine maintenance, where
10 routine maintenance consists of regular, periodic maintenance on
11 one or more pieces of equipment at a refinery process unit or plant
12 that may require shutdown of such equipment.

1 (b) Every September 15, every petroleum refinery employer
2 shall submit to the division a full schedule of planned turnarounds
3 for all affected units for the following calendar year.

4 (c) At the request of the division, at least 60 days prior to the
5 shutdown of a process unit or plant as part of a planned turnaround,
6 a petroleum refinery employer shall provide access onsite and
7 allow the division to review the following documentation for the
8 process unit or plant scheduled to be shut down for that turnaround:

9 (1) All corrosion reports and risk-based inspection reports
10 generated since the last turnaround.

11 (2) Process hazard analyses generated since the last turnaround.

12 (3) Boiler permit schedules.

13 (4) All management of change records related to repairs, design
14 modifications, and process changes implemented since the last
15 turnaround or scheduled to be completed in the planned turnaround
16 referenced in this subdivision and identified in subdivision (b).

17 (5) Work orders scheduled to be completed in the planned
18 turnaround referenced in this subdivision and identified in
19 subdivision (b).

20 (6) All temporary repairs made since the last turnaround,
21 including, but not limited to, clamps and encapsulations. As used
22 in this section, “temporary repairs” means repairs made to piping
23 systems in order to restore sufficient integrity to continue safe
24 operation until permanent repairs can be scheduled.

25 (7) Notification and description of all repairs, design
26 modifications, or process changes described in a corrosion report,
27 risk-based inspection report, process hazard analysis, boiler permit
28 schedule, management of change record, work order, or other
29 document listed in paragraphs (1) to (6), inclusive, that the
30 petroleum refinery employer has deferred to a subsequent
31 operational period or turnaround.

32 (d) The division may request additional information as necessary
33 to perform its responsibilities in this part pursuant to Section 6314.

34 (e) At the request of the division, at least 30 days before the
35 shutdown of a process unit or plant as part of a planned turnaround,
36 a petroleum refinery employer shall provide access onsite and
37 allow the division to review any changes to the information or
38 documents reviewed by the division pursuant to subdivision (c)
39 and relevant supporting documents.

(f) At the division's request, a petroleum refinery employer shall provide the division with physical copies, or, at the division's discretion, electronic copies if available, of the documentation reviewed by the division pursuant to subdivisions (c), (d), and (e).

(g) By agreement with a petroleum refinery employer, the division may modify the reporting period as to any individual item of information.

(h) This section is not intended to limit or increase the division's authority in Part 1 (commencing with Section 6300) to prohibit use of a place of employment, machine, device, apparatus, or equipment or any part thereof that constitutes an imminent hazard to employees.

(i) The Legislature finds and declares that the purpose of this section is to improve the ability of the state to conduct inspections of petroleum refining operations.

SEC. 2. Section 7873 is added to the Labor Code, to read:

7873. (a) As used in this section, "trade secret" means a trade secret as defined in subdivision (d) of Section 6254.7 of the Government Code or Section 1061 of the Evidence Code, Code. *For the purposes of Section 6254.7 of the Government Code, the schedule submitted to the division pursuant to subdivision (b) of Section 7872, and any other information regarding 7872 of this code, and the scheduling, duration, layout, configuration, and type of work to be performed during a turnaround that may provide economic value to any person other than the petroleum refinery employer, employer shall be deemed information used to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its users an opportunity to obtain a business advantage over competitors who do not know or use it. Upon completion of a turnaround, the dates on which scheduling and duration of that turnaround was conducted shall no longer be considered a trade secret.*

(b) (1) If a petroleum refinery employer believes that information submitted to the division pursuant to Section 7872 may involve the release of a trade secret, the petroleum refinery employer shall nevertheless provide this information to the division. The petroleum refinery employer may, at the time of submission, identify all or a portion of the information submitted to the division as trade secret and, to the extent feasible, segregate records designated as trade secret from the other records.

(2) Subject to subdivisions (c), (d), and (e), the division shall ~~protect from disclosure~~ *not release to the public* any information designated as a trade secret by the petroleum refinery employer pursuant to paragraph (1).

(c) (1) Upon the receipt of a request for the release of information to the public that includes information that the petroleum refinery employer has notified the division is a trade secret pursuant to paragraph (1) of subdivision (b), the division shall notify the petroleum refinery employer in writing of the request by certified mail, return receipt requested.

(2) The division shall release the requested information to the ~~public 120 days or more after the petroleum refinery employer's receipt of the notice of the request for information, unless, before the expiration of the 120-day period, the petroleum refinery employer files an action in an appropriate court for a declaratory judgment that the information is subject to protection under subdivision (b), promptly notifies the division of that action, and obtains an order prohibiting disclosure of the information to the public.~~ *public, unless both of the following occur:*

(A) *Within 30 days of receipt of the notice of the request for information, the refinery petroleum employer files an action in an appropriate court for a declaratory judgment that the information is subject to protection under subdivision (b) and promptly notifies the division of that action.*

(B) *Within 120 days of receipt of the notice of the request for information, the refinery petroleum employer obtains an order prohibiting disclosure of the information to the public and promptly notifies the division of that action.*

(3) This subdivision shall not be construed to allow a petroleum refinery employer to refuse to disclose the information required pursuant to this section to the division.

(d) Except as provided in subdivision (c), any information that has been designated as a trade secret by a petroleum refinery employer ~~is confidential information for purposes of this section and shall not be released to any member of the public, except that such information may be disclosed to other officers or employees of the division concerned with carrying out the purposes of the division or when relevant in any proceeding of the division. If the person requesting the release of the information or the person who submitted the information institutes a proceeding for injunctive or~~

1 ~~declaratory relief or a writ of mandate~~ *petroleum refinery employer*
2 *files an action* to order or prohibit disclosure of trade secret
3 information, the person instituting the proceeding shall name the
4 ~~other party person or the petroleum refinery employer~~ as a real
5 party in interest. ~~Each party shall bear its own costs and attorney's~~
6 ~~fees.~~ *The court shall award costs and reasonable attorneys' fees*
7 *to the party that prevails in litigation filed pursuant to this section.*
8 *The public agency shall not bear the court costs for any party*
9 *named in litigation filed pursuant to this section.*

10 (e) This section shall not be construed to prohibit the exchange
11 of ~~properly designated~~ trade secrets between local, state, or federal
12 public agencies when those trade secrets are relevant and necessary
13 to the exercise of their authority.

14 (f) An officer or employee of the division who, by virtue of that
15 employment or official position, has possession of, or has access
16 to, ~~confidential~~ *trade secret* information, and who, knowing that
17 disclosure of the information to the general public is prohibited
18 by this section, knowingly and willfully discloses the information
19 in any manner to a person he or she knows is not entitled to receive
20 it, is guilty of a misdemeanor. A contractor with the division and
21 an employee of the contractor, who has been furnished information
22 as authorized by this section, shall be considered an employee of
23 the division for purposes of this section.

24 SEC. 3. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.